

FEDERAL COMMUNICATIONS COMMISSION
445 12th Street, S.W.
WASHINGTON DC 20554

MEDIA BUREAU
AUDIO DIVISION
TECHNICAL PROCESSING GROUP
APPLICATION STATUS: (202) 418-2730
HOME PAGE: WWW.FCC.GOV

PROCESSING ENGINEER: Robert Gates
TELEPHONE: (202) 418-2700
FACSIMILE: (202) 418-1410
MAIL STOP: 1800B3
INTERNET ADDRESS: Robert.Gates@fcc.gov

JUL 16 2013

Kekahu Foundation, Inc.
P. O. Box 825
Hanalei, HI 96714

In re: K284AL, Haleiwa, HI
BPFT-20120827AAC
Facility ID # 146130

Dear Applicant:

This refers to the above-captioned application for K284AL, Haleiwa, Hawaii. Based on the below, we will dismiss the application BPFT-20120827AAC.

K284AL, began operating on January 17, 2006.¹ K284AL filed a modification application² to change the transmitter site and increase the effective radiated power. The modification application BPFT-20071210AAD was granted and the license³ was granted on June 23, 2008.

The applicant states, at the new site, K284AL is causing interference to KONI(FM)⁴, Lanai City, Hawaii and submitted an application⁵ to change the channel from 284 to channel 224 to resolve the interference. This channel change is a violation of Section 74.1233(a)(1) of the Commission Rules. The applicant requests a waiver of Section 74.1233(a)(1) to be able to resolve the interference.

We have allowed FM translators to waive Section 74.1233(a)(1) only when "displacement" occurs. Displacement occurs when a full service commences operation and there is interference predicted or caused by an existing translator. The interference caused to KONI(FM) started when K284AL commence operation with parameters specified in BLFT-20080610AAB. No other complaints have been filed against K284AL at the previous licensed site. Since the translator's transmitter site moved toward KONI(FM) and KONI(FM) has not moved since 2003 (BLH-20030225ABL), displacement is not warranted and Section 74.1233(a)(1) will not be waived.

¹ License, BLFT-20060117ABG, specified a transmitter site located at 21° 24' 3" N and 158° 6' 10" W

² BPFT-20071210AAD

³ License, BLFT-20080610AAB, specified a transmitter site located at 21° 20' 59" N and 157° 54' 45" W

⁴ BLH-20030225ABL

⁵ BPFT-20120827AAC

When an applicant seeks waiver of the rules, it must plead with particularity the facts and circumstances which warrant such action. *Columbia Communications Corp. v. FCC*, 832 F.2d 139, 192 (D.C. Cir. 1987), quoting *Rio Grande Family Radio Fellowship, Inc. v. FCC*, 406 F. 2d 644, 666 (D.C. Cir 1968 (per curiam)). We have afforded Ivan Rene Moore's waiver request the "hard look" called for under *WAIT Radio v. FCC*, 418 F. 2d 1153 (D.C. Cir. 1969), but find that the facts and circumstances presented are not sufficient to warrant waiver of 47 CFR Section 74.1233.

Accordingly, the request for waiver of 74.1233(a)(1), IS HEREBY DENIED, and the Application BPFT-20120827AAC IS HEREBY DISMISSED. This action is taken pursuant to 47 C.F.R. § 0.283.

Sincerely,

A handwritten signature in blue ink, appearing to read "J. Bradshaw", is written over the printed name.

James D. Bradshaw
Deputy Chief
Audio Division
Media Bureau